In the High Court of Uttaranchal, at Nainital.
A.O. No. 360/2003

1- Smt. Shabih Zera W/o Dilwar Hussain,

2- Dilwar Hussain, S/o Yavar Hussain,

3- Dilshad Hussain S/o Dilwar Hussain,

4- Nayyar Abbas S/o Dilwar Hussain

5- Km. Samar Zehra D/o Dilwar Hussain,

6- Km. Gulshan Zehra D/o Dilwar Hussain,

All R/o Village Chajpura Sadat

P.O. Amhera, Via Haldaur,

District Bijnore U.P. ---- Appellants.

Versus

1- National Insurance Company Ltd.
Ambey Compled, Najibabad Road,
Kotdwar, District Pauri Garhwal
Through its Branch Manager.

2- Charu Steel Limited Balbhadrapur Industrial
Area through its Managing Director
Kotdwar, District Pauri Garhwal
Through its Managing Director ….. Respondents.

Sri Sudhir Kumar, Advocate for appellants.
Sri B.K. Gupta, Advocate for the Insurance Co.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: 19-5-2006

This present appeal, under Section 173 of the Motor Vehicles Act, 1988, has been preferred against the judgment and order dated 28-7-2003, passed by District Judge/M.A.C.T., Pauri Garhwal, in MACP No. 27/2000, Smt. Shabih Zera and others Vs. National Insurance Company and another, dismissing the claim petition of the claimants/appellants.

2- Brief facts of the case giving rise to this appeal are that Dildar Hussain was employed as conductor in Truck No. U.P. 06-2543. On 7.3.2000, Dildar Hussain along with the conductor of the truck carried iron-rods in the said truck from M/s Sidhbali Steel Kandi Road Kotdwar to M/s Hindustan Iron Delhi and started journey at about 9 P.M. When the offending truck did not reach Delhi, search was made and the owner of the truck lodged first information report

at P.S. Kotdwar. During investigation dead bodies of driver Dildar Hussain and conductor Ganesh Chandra Mamgain were recovered from the wheat field of Ram Saran situated in village Ahmad Garh near Khatoli road. The police took into possession the dead bodies and post mortem was conducted. Photos of dead bodies were published in the Newspaper. It was published in the Newspaper that some unknown criminals have committed the murder of the driver and conductor with intention to loot the truck and thereafter the family members of the deceased identified them. The claimants are parents, brother and sisters of the deceased. They have alleged in the claim petition that the deceased at the time of accident was 31 years of age and was earning Rs. 5000/- per month from the job of driver and was also getting Rs. 50/- per day as D.A.. Hence they filed the claim petition for Rs. 10,20,000/- as compensation.

3- The insurer of the offending truck, National Insurance Company contested the claim petition by filing written statement stating therein that the claim petition was filed on wrong facts. It was alleged that the deceased was not employed driver on the offending truck. The dead body of the deceased was recovered from a wheat field in village Ahmad Garh P.S. Jansad District Muzaffarnagar and has no relevance with the alleged accident of the truck. The deceased was murdered for which the Insurance Company is not liable to pay any compensation. It was also pleaded that at the time of accident the offending truck was not being plied in accordance with the conditions of the insurance policy, as the driver was not having valid driving lincence and the truck had no registration certificate and permit etc.

4- The owner of the offending truck also filed his written statement. He alleged that the deceased was murdered by the dacoits with intention to loot the goods loaded in the truck. It was also pleaded that the accident did not occur due to rash and negligence of its driver. The owner of the truck also asserted that the deceased was getting Rs. 2,500/- per month as salary. The offending truck was insured with National Insurance company for the period 2.1.2000 to 1.1.2001. Hence the insurance company is liable for payment of compensation.

5- The Tribunal on the pleadings of parties framed the following issues for determination:-

(1)- Whether the accident took place on 7/8-3-2000 at Jansath Khatoli motor road near village Ahamadnagar due to rash and negligent driving of the driver of Truck No. U.P. 06-2543?.

(2)- Whether the driver of the offending vehicle bearing No. U.P.06-2543 was holding valid driving licence at the time of alleged accident or not?.

(3)- Whether at the time of accident the deceased Dildar Hussain was driving the offending truck No. U.P. 06-2543?.

(4)- To what amount compensation the claimants are entitled to get and from whom?.

6- The claimants produced Dilshad Hussain as P.W.1 and also filed copies of F.I.R., post mortem examination report, absconding report, insurance cover note, salary certificate etc. The O.Ps. examined Ramesh Chandra Sharma, as D.W.1 and Jitendra Singh as D.W.2. The owner of the offending truck also filed copies of permit, fitness, driving licence, registration certificate etc.

7- The Tribunal on hearing learned counsel for the parties and perusing the evidence on record held that the Dildar Hussain was employed as driver in the offending truck and his death was also proved. However the Tribunal held that the claimants have not been successful in establishing that the death of Dildar Hussain was mere an accident and they have also not been successful in proving the negligence and rashness of the owner of the offending truck. Therefore, the Tribunal dismissed the claim petition.

8- Feeling aggrieved the claimants have filed the present appeal.

9- Heard learned counsel for the parties and perused the record.

10- In the instant case the accident took place on some day during 7-3-2000 to 12-3-2000. The dead bodies of the driver and conductor namely Dildar Hussain and Ganesh Chandra Mamgain respectively were recovered from village Ahmadnagar and the first information report was lodged at the police station accordingly. It reveals from the record that on account of the death of Dildar Hussain driver of truck No. U.P. 06-2543 claim petition was filed before the Tribunal and the Tribunal came to the conclusion that the claim petition of the

petitioners is not maintainable as it is not proved that the death of deceased Dildar Hussain occurred during the use of the motor vehicle. The Tribunal was also of the view that the death of Dildar Hussain had occurred on account of an incident which was committed by the unidentified assailants in order to loot the truck.

11- It is worthy to mention here that the heirs of the conductor Ganesh Chandra Mamgain deceased had also filed another claim petition, which is numbered as M.A.C.T. No. 12/2001. The Tribunal in that claim petition after having perused the entire material available on record was pleased to allow the claim petition and directed the National Insurance Company, who was the insurer of the vehicle in question, to pay an amount of Rs. 1,72,267/- as compensation to the legal heirs of the deceased Ganesh Chandra Mamgain. The judgment of the Tribunal in that claim petition shows that the insurance company was held liable to make the payment of the amount of compensation.

12- In view of the aforesaid there is a complete contradiction between the two judgments passed by the Tribunal pertaining to the same accident.

13- We, therefore, think that it would be just and proper without looking into merits of the case, to direct the Tribunal to decide the claim petition afresh in the light of the evidence adduced by the parties. As the accident took place in the year 2000, therefore, the Tribunal is directed to decide the claim petition within a period of three months from the date of filing of certified copy of this judgment.

14- Let the record of the case be immediately remitted to the Tribunal concerned.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

ISB